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**FEB 22 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Kevin K. Lee, et al. :  
Application No. 10/043,896 :  
Filed: January 9, 2002 :  
Attorney Docket No. 113025-120US2 :

**ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed October 13, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed November 19, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on February 20, 2004.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The person signing the instant petition also requests a change of correspondence address to the address given in the instant petition. However, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of

agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

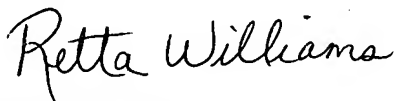
It is noted that petitioner has tendered the small entity amount for the petition fee. However, there is nothing in USPTO records indicating that the application is entitled to small entity status. Therefore, the remaining balance of \$685 for the petition fee and \$395 for the Request for Continued Examination (RCE) has been charged to petitioner's deposit account. If the application is, in fact, entitled to small entity status, petitioner should promptly file a petition under 37 CFR 1.28.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, the \$490 extension of time submitted with the petition on October 13, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account number 19-0079 as authorized.

Receipt is acknowledged of the Amendment filed October 13, 2004, with the instant petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

The application matter is being forwarded to Technology Center 2800, Art Unit 2871 for processing the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.



Retta Williams  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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